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ABSTRACT

The document reports the status of over 100 current court cases relating to the rights of handicapped individuals. Court cases are divided into the following categories: commitment, community living, criminal law, discrimination, guardianship, institutions and deinstitutionalization, medical-legal issues, parental rights and sexuality, special education, and miscellaneous. Information is usually given on location of the court, case number, description of the plaintiffs and defendants, and a brief review of the case. Among the issues addressed are the following: commitment to state institutions, establishment of group homes for the mentally retarded, conviction of mentally retarded individuals for criminal acts, denial of an impaired individual to a school of nursing, nomination of and payment for guardians for state facility patients, creation of less restrictive alternatives to the state hospital for the mentally disabled, provision of medical services in a child whose parents refused treatment, right to denial of sterilization, provision of free appropriate education by a local school district, and child support for a mentally incapacitated adult child. (SBH)

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Human Development Services
President's Committee on Mental Retardation

Working with State and Local Agencies to Create Caring Communities

MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

DECEMBER 1979

PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

REGION I DEVELOPMENTAL DISABILITIES OFFICE

INFORMATION ON ANY NEW CASES, OR ANY DEVELOPMENTS IN REPORTED CASES, SHOULD BE SENT TO: EDITOR, MENTAL RETARDATION AND THE LAW, BOSTON UNIVERSITY CENTER FOR LAW AND HEALTH SCIENCES, 209 BAY STATE ROAD, BOSTON, MASSACHUSETTS 02215; OR CALL (617) 353-2904.

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UNDER DHEW CONTRACT NO. 110-79-00006

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Addington v. Texas, 99 S. Ct. 1804 (1979).

Texas - United States Supreme Court - appellant's attorneys: Martha L. Boston, 109 East Tenth Street, Austin, Texas 78701; Robert Plotkin and Paul Friedman, Mental Health Law Project, 1220 19th Street, N.W., Washington, DC 20036.

Appellant: a mentally ill individual whose mother petitioned for his indefinite commitment to a state mental hospital pursuant to Texas law governing involuntary commitments.

A state trial court ordered appellant's commitment to a state mental institution after a finding by the jury that he was mentally ill and that he required hospitalization for his own welfare and protection or for the protection of others. The findings were based on a "clear, unequivocal and convincing" standard of proof. The Texas Court of Appeals reversed, holding that in involuntary civil commitment proceedings the "beyond a reasonable doubt" standard was required. The Texas Supreme Court reversed the Court of Appeals decision and reinstated the trial court's judgment, holding that the "preponderance of the evidence" standard of proof should be used. The United States Supreme Court granted certiorari and held that the due process clause of the Fourteenth Amendment requires a "clear and convincing" standard of proof in involuntary civil commitment proceedings. The court stated that such a standard was the constitutional minimum and that individual states could require a stricter standard of proof.

Parham v. J.L. and J.R., No. 75-1690 (U.S. Sup. Ct. June 20, 1979), and Secretary of Public Welfare of Pennsylvania v. Institutionalized Juveniles, No. 77-1715 (U.S. Sup. Ct. June 20, 1979), reported at 47 U.S.L.W. 4740, 4754.

(Parham)

Georgia - United States Supreme Court - class action - appellants' attorney: R. Douglas Lackey; appellees' attorney: John L. Cromartie.

Appellants: state agency, commissioner, and officials. Appellees: two named teenagers and the class of all children being treated in Georgia state mental hospitals.

Reported earlier: MR&L September 1976 p. 1, July 1978 p. 1, October 1978 p. 1.

(Institutionalized Juveniles, previously Bartley v. Kremens)

Pennsylvania - United States Supreme Court - class action - appellees' attorney: David Ferleger, Philadelphia, Pa.

Plaintiffs: named individuals and class of mentally ill and mentally retarded children committed to state facilities on application of their parents or guardians. Defendants: state officials.

Case reported earlier: MR&L September 1975 p. 13, December 1975 p. 2, September 1976 p. 2, January 1977 p. 1, October 1978 p. 2.

In these consolidated cases, the Supreme Court held that the states' procedures for the commitment of minors to state facilities satisfy minimum due process requirements. The court stated that an inquiry by a neutral factfinder is required to protect and balance the interests of the state, the child and the parents, but that a formal adversary proceeding is not necessary.

Prior screening of commitments by "independent" mental health professionals is sufficient to satisfy due process requirements. There were concurring opinions and dissents to some of the statements of the majority. The opinions merit a thorough reading, in light of the Supreme Court's questionable assumptions and views of the commitment process.

Cramer v. Tyars, No. MDP-8618 (Cal. Sup. Ct. January 12, 1979), reported in Mental Disability Law Reporter, March-April 1979 pp. 90-92.

California - highest state court.

The court held, under the state statute dealing with the commitment of dangerous mentally retarded persons, the person to be committed has no right to refuse to be a witness at his or her own commitment hearing. While persons may refuse to testify regarding matters which would tend to implicate them in criminal activities, it was a harmless error to fail to allow assertion of the privilege where there was overwhelming evidence that the person was mentally retarded and dangerous.

K.W. v. Kort, No. C-2030 (Dist. Ct. Pueblo Cty., Colo. February 8, 1979).

Colorado - state trial court.

Plaintiff: habeas corpus petition by a child involuntarily committed to state hospital by her parents.

The court held the state commitment statute violated the due process guarantees of state and federal constitutions. The case is now awaiting further proceedings in light of the Supreme Court's decision in Parham.

People v. Reliford, No. 77-691 (Ill. Ct. App. 3rd Div. September 20, 1978), reported at Mental Disability Law Reporter, Jan.-Feb. 1979 pp. 33-34.

Illinois - state appellate court.

The court found that the state statute authorizing involuntary institutionalization based solely on a finding of mental retardation violated the due process clauses of the state and federal constitutions.

Seibert v. Wayne County Probate Court, No. 79-921758CZ (Michigan, Wayne County Cir. Ct. June 27, 1979), reported at Mental Disability Law Reporter, September-October 1979, p. 319.

Michigan - class action - state court - plaintiffs' attorney: Frederick L. Miller, civil commitment Defender Office, Legal Aid and Defender Association of Detroit, 600 Woodward Avenue, 7th Floor, Detroit, MI 48226.

Plaintiffs: the class of everyone who has been or will be subject to civil commitment proceedings in Wayne County. Defendants: Wayne County probate Court and certain state and county officials.

Plaintiffs brought this action alleging that court practices for assigning counsel in civil commitment cases violate U.S. and state constitu-

tional and statutory rights. The plaintiffs claim that there is "systematic ineffective assistance of counsel" in civil commitment cases, due to factors such as high case loads, insufficient time for preparation, minimal compensation and the lack of needed resources. Plaintiffs seek a preliminary and a permanent injunction to correct these practices. The court denied a temporary restraining order on June 28, 1979.

In re Ralph M., 417 N.Y.S.2d 608 (N.Y. County Fam. Ct. 1979).

New York - County Family Court - plaintiff's attorney: Judith S. Levy, Asst. Corp. counsel, New York, New York; Steven Hiltz, Legal Aid Society, New York City - Law Guardian.

Plaintiff: a minor found to be mentally ill and dangerous to himself and others.

The court adjudicated the plaintiff a juvenile delinquent and found that he required "supervision, treatment and confinement" as provided by state statute. The court held that a clear and convincing standard of proof for the involuntary commitment of minors was constitutionally mandated after the Supreme Court's holding in Addington v. Texas. The present case, however, was decided before Parham v. J.L. . In light of Parham, this case may be reversed on appeal.

COMMUNITY LIVING

Adams County ARC v. City of Westminster, 580 P.2d 1246 (Colo. 1978).

Colorado - state's highest court - plaintiff's attorneys: Epstein and Gilbert, P.C., Joseph M. Epstein, Denver, Colorado.

Plaintiff: local ARC which sought to establish a group home for mentally retarded citizens in a single family residential district. Defendant: the city of Westminster.

The plaintiff brought a suit to compel the issuance of a special use permit for the establishment of a group home for the mentally retarded. The trial court found the local zoning ordinance conflicted with a state statute which provided for group homes in single family districts. The court held that the City Council had exceeded its jurisdiction and abused its discretion by denying the special permit. The state Supreme Court held that the local ordinance did not violate the state statute, but rather provided that the review criteria for issuing or denying special permits would be governed by the applicable statutes. The court also held that the council did not use the proper criteria in reviewing plaintiff's application for a special permit. The council erred in considering the adverse effects of the group home on the "single family characteristics of the neighborhood," "the peace and quiet

of the neighborhood," and "the attitide of general hostility in the neighborhood towards this proposed facility." The court remanded the case to the City Council for reconsideration based on the permissible criteria set forth in the statute.

Due to a federal grant for the establishment of group homes in the county, the need for a home in Westminster was diminished and the parties entered into a stipulation for dismissal.

Roundup Foundation, Inc. v. Board of Adjustment of the City and County of Denver, No. 79CV5099 (Colo. Dist. Ct., City and Cty. of Denver, July 26, 1979), reported at Mental Disability Law Reporter, September-October 1979 p. 321.

Colorado - state trial court - plaintiff's attorneys: David A. Solomon and Bruce C. Bernstein, Legal Center for the Handicapped. Denver, Colorado.

Plaintiff: a private, non-profit corporation licensed by the state to establish group homes for the care of developmentally disabled children. Defendant: Denver Board of Adjustment.

Plaintiff, claiming violations of state statutes and a city zoning ordinance, brought this suit against the Denver Board of Adjustment for upholding the local zoning board's decision to deny plaintiff permission to establish a group home for eight developmentally disabled children in a residential area. The state statute provides that "a state-licensed group home for eight developmentally disabled persons is a residential use of property for zoning purposes."

Doe v. Shutt, C.A. No. 772755 (E.D. Mich. July 6, 1978), reported at Mental Disability Law Reporter, May-June 1978, p. 710.

Michigan - federal district court - class action.

This action challenged a city's alleged efforts to close down homes in which foster care residents reside. The court issued a preliminary injunction prohibiting "the defendants from bringing further nuisance abatement actions, or actions alleging violations of the city's housing code or zoning ordinances against licensed adult foster care homes within the city." Furthermore, the injunction prohibits the defendants from harrassing or intimidating residents living in such homes, and from causing their eviction or disturbing their living arrangements. However, defendants are not enjoined from pursuing state administrative remedies, or from seeking state court declaratory relief.

Alexander v. Minnesota Jewish Group Homes, No. 746834 (4th Jud. Dist. Ct. Minn. July 26, 1978), reported at Mental Disability Law Reporter, January-February 1979, p. 36.

Minnesota - state trial court.

The court "dismissed a complaint seeking an order to permanently restrain the defendant from using a house in a residential area, Westwood Hills Grove, as a group home for six mentally retarded adults. The court held that the home does not violate the area's covenant restricting use to a single family dwelling for residential purposes."

New Jersey v. Baker, A-59 (N.J. Sup. Ct. August 1979).

New Jersey - highest state court - plaintiff's attorney: David H. Rothberg of Sachar, Berstein, Rothberg, Sikcra, and Mongello; amicus: Public Advocate of New Jersey.

The court was faced with the issue of "whether a municipality may utilize criteria based upon biological or legal relationships in order to limit the types of groups that may live within its borders." The ordinance in question prohibited more than four unrelated individuals from sharing a housing unit. The court held that although the goal of preserving the family was entirely legitimate, the means chosen did not bear a substantial relationship to the effectuation of that goal. Therefore the ordinance was in violation of the state constitution.

Although the case did not deal with handicapped people, the language and intent behind the decision may so apply. Baker is at odds with the U.S. Supreme Court decision of Village of Belle Terre v. Boraas, 416 U.S. 1, 39 L.Ed.2d 797 (1974). Since Baker is based on state constitutional grounds rather than the U.S. Constitution, there is no legal conflict between the two decisions.

Group House of Port Washington, Inc. v. Board of Zoning and Appeals of North Hempstead, 408 N.Y.S.2d 377 (N.Y. Ct. App. 1978).

New York - highest state court - plaintiff's attorneys: Leonard Weintraub and Ileen V. Crowley, Port Washington, N.Y.

Plaintiff: a non-profit corporation which sought to establish a group home in a single family zone for the care of children. Defendants: the Board of Zoning and Appeals of the Town of North Hempstead.

Plaintiffs brought a suit to compel the issuance of a building permit for structural modifications of a house to be used as a group home. The trial court ordered the issuance of the permit, holding that the group home proposed by the plaintiff was a family for zoning purposes. The Appellate Division affirmed the judgment but on different grounds. The court stated that since the group home had been approved by the state, a municipality could not use its zoning laws to exclude such a home. The Court of Appeals also affirmed the judgment, holding that the proposed group home could not be distinguished from a natural family, and as such was a permitted use as a one-family dwelling under the local zoning ordinances. The court did not address the question of whether the state had pre-empted the right of municipalities to use their zoning laws to forbid the establishment of group homes.

English v. Zoning Board of Appeals of the Town of Evans, (N.Y. Sup. Ct. May 8, 1978), reported at Mental Disability Law Reporter, January-February 1979, p.36.

New York - state trial court.

In this case the court "decided that a large residence covering 29 acres of land and over 13,000 square feet of living space can be used as a group home for mentally retarded adults. This use of property can be considered 'single family residential use' provided that the number of residents does not exceed 15 persons and that they are non-transient."

Columbus v. Rhodes, Case No. 77-CV-10-4296 (Ct. Comm. Pleas, Franklin Cty., Ohio, March 2, 1979).

Ohio - state trial court - defendant's attorney: John F. Casey, Association for the Developmentally Disabled; appearance by George Stricker, Jr., Assistant Attorney General, State of Ohio.

Plaintiff: municipality. Defendant: non-profit corporation attempting to purchase realty for group home for developmentally disabled persons.

This declaratory judgment concerned a conflict between a municipal zoning code prohibiting "non-family" housing and state law favorable to group homes. The trial court enjoined purchase of the realty, holding the state statute was unconstitutional as applied to the municipality's zoning power and also found an exemption in the statute which would allow the same result. An appeal has been planned by defendants and the state in this case and a similar one, Siffrin Residential Association.

Barnette v. Flaherty, (Ct. Comm. Pleas, Allegheny Cty., Penn. September 1979).

Pennsylvania - state trial court - plaintiffs' attorneys: Ilene W. Shane, Developmental Disabilities Law Project, Pittsburgh, Pa., Edward G. Titterton, Public Interest Law Center of Philadelphia, Pa.

Plaintiffs: ten multiply-handicapped retarded persons and their families. Defendants: county administrators.

Plaintiffs, in need of programs of appropriate community services, seek a court order to enjoin defendants from failing to provide these services as required by state law, the Rehabilitation Act, the Social Security Act, and the state and federal constitutions.

Insight v. Manassas, C.A. No. 78-255A (E.D. Va. November 29, 1978).

Virginia - federal district court.

Plaintiffs: non-profit corporation operating group homes, and two mentally retarded adults. Defendants: local municipal officials.

Case reported earlier: MR&L July 1978 p. 18, October 1978 p. 14.

The court dismissed the case after it held that there was insufficient evidence to establish discrimination by defendants.

Watters v. Alabama, 369 So.2d 1262 (Ala. Ct. Crim. App. 1978), rev'd on other grounds, 369 So.2d 1272 (Ala. Sup. Ct. 1979).

Alabama - Supreme Court - appellant's attorneys: J. Wilson Dinsmore and D. Larry Waites, Birmingham.

Appellant: a seventeen-year-old mentally retarded male who was indicted for intentional murder while committing a robbery.

The state trial court convicted the defendant of attempted robbery and intentional murder, and imposed the death penalty. The Court of Criminal Appeals upheld the conviction and the death penalty sentence, holding that I.Q. is not a mitigating circumstance under the Death Penalty Act. The court stated that mental retardation is not a defense to a criminal act unless it can be shown that the individual cannot distinguish between right and wrong. The court refused to hold as a matter of law, that appellant's confession was involuntary because of his mental subnormality, in view of the testimony which showed that appellant understood the consequences of his confession.

In re Ramon M., 584 P.2d 524 (Calif. 1978).

California - state's highest court - defendant's attorneys: Paul Halvonik, State Public Defender and Charles M. Sevilla, Chief Assistant Public Defender.

Plaintiff: Acting Chief Probation Officer. Defendant: a fourteen-year-old mentally retarded male found guilty of criminal conduct.

The Supreme Court of Los Angeles County held the defendant to be a ward of the court after he violated the state's penal code by unlawfully fighting in a public place. On appeal, the Supreme Court reversed the decision of the lower court. The court held that insanity and idiocy, which include mental retardation, are defenses to criminal conduct. The court adopted the American Law Institute test to define all defenses of mental incapacity. That test provides that: "a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." The court held that under the ALI test defendant's mental retardation could constitute a defense to his criminal conduct. The court also held that the penal code, which provides that children under the age of 14 are incapable of committing a crime unless there is clear proof that they knew of wrongfulness, refers only to chronical age and not to mental age. Lastly, the court noted that the trial court may have abused its discretion by not raising a doubt concerning defendant's competency to stand trial.

Bradshaw v. Florida, 337 So.2d 1032 (1976), 353 So.2d 188 (Fla. Ct. App. 1978).

Florida - state appellate court - plaintiff's attorney: Robert E. Jagger, Public Defender.

Defendant: 23-year-old criminal defendant with mental age considerably below his chronological age.

The court in this prosecution affirmed the trial court's striking of the defense of diminished mental capacity, "since retardation or diminished mental capacity does not insulate a defendant from criminal responsibility." However, the court would allow admission of lay, not expert, testimony going to defendant's lack of specific intent.

Ware v. Indiana, 376 N.E.2d 1150 (Ind. 1978).

Indiana - state's highest court.

The defendant in this action was convicted of two counts of rape and sodomy. The state Supreme Court affirmed the discretion of the trial court in finding the complaining witness competent to testify. The witness, 28-years-old, classified as "borderline" mentally retarded, was personally examined by the trial court. It found that she understood the meaning of "to tell the truth", knew she would be punished if she did not tell the truth, and was very consistent in relating the events that had occurred.

Louisiana v. Williams, 363 So.2d 441 (La. 1978).

Louisiana - state's highest court - defendant's attorney: Brian Perry, New Orleans, Louisiana.

The deaf-mute defendant in this action was indicted for aggravated rape. The appeal was of a trial court's denial of a motion to dismiss the charges or to commit the defendant. The court held that before any trial, there must be an inquiry into whether the defendant's ability to communicate could be improved, to enable determination of mental illness or mental retardation, possibly for trial. Otherwise, the state would have to release the defendant.

New York v. Dixon, 412 N.Y.S.2d 42 (Sup. Ct. App. Div. 1978).

New York - state appellate court.

The defendant in this action was convicted of third degree rape. The appeals court held that the evidence supported findings that the mentally retarded victim could not appraise the nature of her conduct and was incapable of consenting to sexual intercourse.

Doe v. Henderson, A-7980-1 (Tenn. Chancery Ct. 1979).

Tennessee - state trial court - class action - plaintiffs' attorney: Legal Services of Middle Tennessee, Nashville.

Plaintiffs: mentally retarded youth offenders. Defendants: state correctional officers.

Plaintiffs allege that they are not receiving adequate treatment, including special education.

Southeastern Community College v. Davis, No. 78-711 (U.S. Sup. Ct. June 11, 1979), reported at 47 U.S.L.W. 4689.

United States Supreme Court - plaintiff's attorney: Marc P. Charmatz, National Center for Law and the Deaf, Washington, D.C. Numerous amici filed briefs in this case.

Plaintiff: hearing-impaired nurse. Defendant: state college.

This case marks the first time the Supreme Court was asked to interpret §504 of the Rehabilitation Act of 1973. Ms. Davis, who has a serious hearing disability, sought admission to the nursing program at the defendant college. The Court held there was no violation of §504 when defendant concluded that Ms. Davis did not qualify for admission to the program: "Nothing in the language or history of §504 reflects an intention to limit the freedom of an educational institution to require reasonable physical qualifications for admssion to a clinical training program." The actual holding in Davis is very narrow and may be limited to the facts of the case, although there are troubling dicta revealing the Court's views of the statute, the DHEW regulations, and handicapped persons in general.

The Court chose not to consider the question of the existence of a private right of action to redress discrimination under §504. This is important for the development of deinstitutionalization lawsuits.

Trageser v. Libbie Rehabilitation Center, No. 77-2224 (C.A.4, December 18, 1978), reported at U.S.L.W. 2435, held that there is no private right of action for employment violations under §504. Although the U.S. Department of Justice argued that the Circuit Court's interpretation of the effect of 1978 amendments to the Rehabilitation Act was faulty, the U.S. Supreme Court at 47 U.S.L.W. 3811 denied certiorari.

Such an action leaves standing the conflict between the circuits on the existence of a private right of action under §504. The third circuit recently found such a right. NAACP v. Medical Center, reported at 47 U.S.L.W. 2811 (June 4, 1979). Shortly before Davis, the Supreme Court found a private right of action under Title IX of the Educational Amendments of 1972, despite the absence of any express authorization in the language of the Act, which tracks §504.

One federal district court recently rejected the Trageser reasoning, found a private right of action under §504, but required exhaustion of administrative remedies. Hart v. County of Alameda, No. C-79-0091-WHO (N.D. Cal., September 6, 1979). For a district court opinion which does not require the exhaustion of remedies under §504, because they are "inadequate, ineffective and inefficient," see Whitaker v. Board of Higher Education of the City of New York, No. 77-C-2258 (E.D.N.Y., October 17, 1978).

Heap v. Roulet, No. 105919 (Cal. Sup. Ct. February 6, 1979).

California - highest state court.

The court held that under a state statute, before a proposed conservator can be appointed with the power to involuntarily commit a proposed conservatee, a threshold determination of whether or not the proposed conservatee is gravely disabled as a result of mental disorder must be proved beyond a reasonable doubt. When a jury is requested, the decision must be by a unanimous verdict.

Justice v. Smith, C.A. No. 8886-79 (D.C. Super. Ct. July 16, 1979).

District of Columbia - district superior court - class action - plaintiffs' attorney: Robert Plotkin, Mental Health Law Project, 1220 19th St., N.W., Washington, DC 20036.

Plaintiffs: named individuals and class of all persons now under conservatorship, or who may be subject to such stature. Defendant: District of Columbia.

This complaint challenges the District's conservator law which provides for appointment by the court of persons to manage the property of individuals who are found to be unable to manage their own person or property. Plaintiffs allege that the statute violates procedural due process and lacks adequate assurances of monitoring established conservatorships.

In re Fabre, No. 63057 (La. Sup. Ct. May 21, 1979).

Louisiana - highest state court - plaintiff's attorney: Margaret A. Coon, Baton Rouge, La.

Respondent: mentally retarded woman subject to interdiction petition of her brother.

The court overturned a trial court judgment of interdiction (a severe form of guardianship). The court held that the respondent was effectively caring for herself and her child, although she was not capable of handling her financial affairs. Under state statute, interdiction requires a showing that the person is incapable of administering his estate and is unable to care for himself.

In re G.B., Case No. E-3936 (Cir. Ct. Prince George's Cty., Md., June 5, 1978).

Maryland - state court - petitioner's attorney: Legal clinics of Cawley, Schmidt.

Petitioner: parent of 26-year-old mentally retarded, voluntarily committed man.

The court appointed the state's Department of Health and Mental Hygiene to be provider of services and guardian to the concerned person. The court's

findings included: the client's care is in the least restrictive form, the state shall provide and pay for transportation and food incidental to a special day program, the department secretary may consent to enumerated medical procedures for the ward, and that only the powers specifically listed are granted to the guardian.

John Doe v. Richard Doe, Mass. Adv. Sh. 343 (Mass Sup. Jud. Ct. 1979).

Massachusetts - highest state court - plaintiff's attorney: Stephen R. Katz; defendant's attorney: Paul K. Connolly, Jr.

Plaintiff: father of allegedly mentally ill son.

The court construed a state statute which denies a guardian of a mentally ill person the authority to commit the ward to a mental health facility (including MR) unless the court "specifically" finds commitment to be in the "best interests" of the ward. The court held that in the circumstances of this case the statute requires a finding, beyond a reasonable doubt, that failure to commit would create a "likelihood of serious harm."

In re Bassett, Mass. App. Ct. Adv. Sh. 186 (1979).

Massachusetts - state appellate court - report of questions from probate judge.

In this case, the court held that a state probate court may use its general equity powers to appoint a limited guardian of a mentally retarded person. The court also construed the state guardianship statute to authorize such an appointment.

In re Gamble, In re Cummings, 394 A.2d 308 (N.H. Sup. Ct. 1978).

New Hampshire - state's highest court - respondents' attorneys: Mitchell Simon and David Wolowitz.

Petitioners: superintendent of the New Hampshire Hospital and the superintendent of the Laconia State School. Respondents: two mentally incompetent residents of state institutions.

Two state probate courts certified questions of law to the Supreme Court concerning the nomination of and payment for guardians for patients residing in state facilities. The court held that state statutes require the state, not the courts, to nominate and obtain guardians for incompetent patients in state institutions. A probate judge must determine whether the patient is incompetent, and if so, whether the proposed guardian is suitable. The court also held that when the incompetent patient is an indigent with no relative responsible for his support, the state must bear the costs of guardianship proceedings and guardians' expenses.

In re Jacqueline H., No. 78-AP-568 (Ct. App. Franklin Cty., Ohio February 15, 1979).

Ohio - state appellate court - plaintiff's attorney: Ohio Legal Rights Service.

Plaintiff: 40 year-old retarded woman, institutionalized since age 8.

On September 27, 1978 a state probate court denied a state agency request for an appointment of a non-profit corporation as guardian of the plaintiff. The court held that appointment without an independent evaluation would violate the individual's due process rights, but the court stated that it did not have funds for such an evaluation. On appeal, the court did not reach the merits, but held that the state agency had no standing to appeal. The decision was based on state law; the conflict of interest between ward and guardian, the non-adversary nature of such proceedings, and lack of subject matter interest by the state agency.

In re Donald D., No. 318605 (Com. Pleas Ct., Franklin Cty., Ohio September 27, 1978).

Ohio - state probate court.

Plaintiff: 31 year-old profoundly retarded, institutionalized man.

In a companion case to Jacqueline H., the probate court rejected this guardianship appointment, holding that it was not necessary for adequate care or protection of the legal rights of the individual.

INSTITUTIONS AND DEINSTITUTIONALIZATION

United States v. Mattson, No. 76-3568 (C.A.9 July 17, 1979), reported at 48 U.S.L.W. 2093.

Montana - U.S. Circuit Court of Appeals.

The U.S. Attorney General brought suit alleging that mentally retarded persons confined in a Montana facility were being deprived of their rights under the Eighth, Thirteenth, and Fourteenth Amendments. After dismissal of the complaint by the district court, the circuit court affirmed, holding that the U.S. may not bring such suits without express statutory approval.

Wyatt v. Ireland, C.A. No. 3195-N (N.D. Ala. October 25, 1979) (other citations omitted).

Alabama - federal district court - class action - plaintiffs' attorneys: Stephen J. Ellmann, Southern Poverty Law Center, Montgomery, Alabama; amicus: United States Department of Justice.

Plaintiffs: class of mentally retarded individuals institutionalized in state facilities. Defendants: state and institutional officials.

Case reported earlier: MR&L September 1975 pp. 67-74, January 1978 p. 12, October 1978 pp. 8-9.

After consideration of motions and supporting memoranda from plaintiffs and defendants, the court came down with a new opinion and order on October 25. In the words of the court:

> The Court now finds and concludes that defendants are in substantial and serious noncompliance with the orders entered in this case over seven years ago, in several critical areas. Among these are:
>
> 1. Failure to provide adequate habilitation programming;
> 2. Insufficiently trained staff;
> 3. Failure to move residents from the large institutions to less restrictive settings;
> 4. Failure to provide privacy for residents;
> 5. Inadequate policies and practices concerning the administration of medication - this includes serious overmedication;
> 6. Failure to adequately protect residents from abuse by staff members;
> 7. Failure to provide an adequate dental care program;
> 8. Failure to provide adequate medical supervision and care.
>
> In consideration of the above findings that reflect several areas of substantial noncompliance with this Court's orders as they relate to Alabama's mental retardation facilities and in consideration of the complete lack of evidence that indicates for the future any better or more effective efforts, the Court concludes that over seven years of failure to comply by the defendant Board mandates the appointment of a receiver.

The plaintiffs were given until Nov. 5 to nominate a person to be appointed receiver. The Governor of Alabama is to file by January 3 a proposal detailing the remedial steps he will take, if appointed receiver, to achieve compliance with the court order.

Griswold v. Riley, No. CIV 77-144 PHX CAM (D. Ariz. June 4, 1979).

Arizona - federal district court - class action - plaintiffs' attorney: Robert Beckett, Venable, Rice, Lee and Capra, Phoenix, Arizona.

Plaintiffs: named individuals and all mentally retarded persons residing at the Arizona Training Program at Coolidge. Defendants: state and institutional officials.

A voluminous consent decree has been arrived at in this "least restrictive alternative" action. Monitoring agreements include a review panel, a human rights committee, and ARC monitoring.

Colorado ARC v. Colorado, C.A. No. 78-F-1182 (D. Colo. June 26, 1979).

Colorado - federal district court - class action - plaintiffs' attorney: Bruce Bernstein, Legal Center for Handicapped Citizens, Denver, Colo.

Plaintiffs: named individuals and all developmentally disabled persons in the state. Defendants: state, governor, state officials.

This suit sought declaratory and injunctive relief under federal law to obtain appropriate education, habilitation, care and treatment. The federal court, utilizing the doctrine of abstention, dismissed the action, stating that the state courts should have the first opportunity to hear the suit.

Connecticut ARC v. Thorne, C.A. No. H-78-653 (D. Conn. December 6, 1979).

Connecticut - federal district court - class action - plaintiffs' attorneys: David C. Shaw and Joan E. Pilver, Hartford, Conn.

Plaintiffs: named individuals and class of retarded citizens who are in jeopardy of being placed in the Mansfield Training School, and those transferred to nursing homes. Defendants: state and institutional officials.

Plaintiffs in this suit seek the phasing out of the institution and its replacement with a wide array of community-based residential and support services. The state Protection and Advocacy agency, the National ARC, the Connecticut Civil Liberties Union and the National Center for Law and the Handicapped have moved to intervene on behalf of the plaintiffs. Groups of parents dissatisfied with the focus of the lawsuit have moved to intervene on the side of the defendants.

Dixon v. Weinberger, C.A. No. 74-285 (D. D.C. July 31, 1978).

District of Columbia - federal district court - class action - plaintiffs' attorney: Margaret F. Ewing, Mental Health Law Project, Washington, D.C.

Plaintiffs: class of patients confined in St. Elizabeth's Hospital. Defendants: federal and district officials.

Case reported earlier: MR&L September 1975 pp. 75-76, September 1976 p. 16, January 1978 p. 22.

Plaintiffs have filed a motion requesting appointment of a special master to oversee the court's 1975 order mandating a comprehensive implementation plan to develop community mental health facilities.

Kentucky ARC v. Conn, C.A. No. C78-0157-L(A) (W.D. Ky. June 15, 1979).

Kentucky - federal district court - class action - plaintiffs' attorney: Lawrence S. Elswit, Legal Aid Society of Louisville.

Plaintiffs: named individuals and class of all persons who presently reside or may in the future reside at Outwood, a state institution for retarded persons. Defendants: state and institutional officials.

Case reported earlier: MR&L January 1978 pp. 23-24.

Plaintiffs have filed a lengthy Post-Trial Memorandum, reviewing the facts which came out during the trial and the relevant law. A decision has not yet been announced.

The action of Kentucky ARC v. Califano, C.A. No. 78-1398 (D.D.C. July 31, 1978), reported earlier at MR&L October 1978 pp. 9-10, has been voluntarily dismissed in light of KARC v. Conn.

Gary W. v. Louisiana, 437 F.Supp. 1209 (E.D. La. 1976), 329 F.Supp. 711, 441 F.Supp. 1121 (E.D. La. 1977).

Louisiana - federal district court - class action.
Plaintiffs: Louisiana children placed in Texas institutions. Defendant: state of Louisiana.
Previously reported: MR&L September 1976 pp. 17-18, January 1977 p. 9, April 1977 p. 13, January 1978 p. 24, July 1978 p. 14, October 1978 p. 11.
The court has appointed a special master to oversee implementation of its earlier order.

Brewster v. Dukakis, C.A. No. 76-4423-F (D. Mass. December 7, 1978).

Massachusetts - federal district court - class action - plaintiffs' attorney: Stephen J. Schwartz, Mental Patients Advocacy Project, Northampton State Hospital, Northampton, MA.
Plaintiffs: named individuals, and past, present and future residents of Northampton State Hospital, Mass. Assoc. for Mental Health, Mass. ARC. Defendants: Governor, virtually all state commissioners and administrators of human service agencies.
Case reported earlier at MR&L January 1978 pp. 24-25, July 1978 p. 15, October 1978 p. 13.
This suit was brought to compel the state to create and maintain appropriate less restrictive alternatives to the state hospital for all mentally disabled persons in Western Massachusetts. Intensive negotiations produced a voluminous consent decree which provides that the hospital will be closed within 2-1/2 years and that the defendants will create and maintain appropriate residential and non-residential programs adequate to meet the individual needs of all members of the plaintiff class. The decree describes in detail the specific number, type, and costs of all services to be provided, and provides for a monitor to oversee implementation.

McEvoy v. Mitchell, C.A. No. 75-2768-T (D. Mass. February 2, 1979).

Massachusetts - federal district court - class action - plaintiffs' attorney: Beryl W. Cohen.
Plaintiffs: named individuals and class of all persons who resided at a state school for the retarded on or after July 23, 1974. Defendants: administration of Fernald state school and state officials.
See related cases: Ricci v. Greenblatt, MR&L September 1975 p. 81; Gauthier v. Benson, MR&L January 1977 p. 10.
This consent decree establishes "a framework for providing a suitable living environment, habilitation services and active treatment for each member of the plaintiff class, in accordance with federal and state constitutional standards.: The decree calls for individual service plans for all residents and clients, calls for renovation of the physical plant, and staffing changes. The decree provides procedural guidelines for transfer to community settings, but does not set out a comprehensive scheme for such services. Similar decrees in two other state school suits were signed shortly afterwards (Dever, Wrentham).
On June 1, 1979 the court monitor for this decree issued his first report. The monitor is overseeing implementation of decrees resulting from class

action litigation at five state schools for retarded people (Fernald, Belchertown, Monson, Wrentham, and Dever). He stated, "What we have, in the Monitor's view, is a large number of people working in good faith to upgrade facilities and programs which still leave much to be desired."

A motion to intervene in the McEvoy case prior to signing of the consent decree was denied by the court. Intervenors sought to protect their right to habilitation in the least restrictive setting, believing that plaintiffs were not attempting to develop and advance community services but to expend resources on the development of the institution. After denial of the motion, intervenors filed the complaint as a separate action. Gustafson v. Maloney, C.A. No. 78-3040-MC (D.Mass. Nov. 27, 1978). Attorney for plaintiffs: Developmental Disabilities Law Center of Massachusetts, Boston.

Michigan ARC v. Smith, C.A. No. 78-70384 (E.D. Mich. August 30, 1979).

Michigan - federal district court - class action - plaintiffs' attorney: Michigan Protection and Advocacy Service for Developmentally Disabled Citizens.

Plaintiffs: Plymouth ARC, Michigan ARC, named individuals, class of residents at the Plymouth Center for Human Development. Defendants: former and present officials of Plymouth Center and Michigan Department of Mental Health.

Case reported earlier, MR&L July 1978 pp. 9-10, October 1978 p. 7.

The decree in this suit sets forth the establishment of a "commitment to the development of a comprehensive system of appropriate, less restrictive habilitation training, and support services for each member of the plaintiff class. All mentally retarded individuals can and should live in the most normalized environment of the community and do not require institutionalization given the development of necessary habilitation and support services in the community."

The decree sets limits on Plymouth Center admissions, a timetable for the eventual limitation of temporary resident population to 100 (those dangerous to self or others, or "medically fragile"), and a plan for individual habilitation and community placement. A court master has been appointed to monitor the progress of the community placement effort. The independent master is a former associate director of the state's department of mental health.

Garrity v. Thomson, C.A. No. 78-116 (D. N.H. April 12, 1978).

New Hampshire - federal district court - class action - plaintiffs' attorney: Richard A. Cohen, Concord, N.H.

Plaintiffs: class of developmentally disabled persons confined at the Laconia State School. Defendants: state and institutional officials.

The complaint alleging deprivations of federal and state constitutional rights for residents at the state institution, seeks injunctive and declaratory relief. The United States Department of Justice was allowed to intervene, and trial is expected shortly.

New Jersey ARC v. Klein, (D. N.J. May 30, 1979).

New Jersey - federal district court - class action - plaintiffs' attorney: New Jersey Public Advocate's Office.

Plaintiffs: all present and prospective mentally retarded residents of the New Jersey Neuropsychiatric Institute. Defendants: state and institutional officials.

Plaintiffs allege that their constitutional and statutory rights have been violated since they are not being provided with appropriate programs and services. They seek injunctive relief ending harmful practices, and provision of services in the least restrictive environment suitable to each individual's needs.

Guempel v. State of New Jersey, 387 A.2d 399 (N.J. Super. Ct. Law Div. 1978), No. 15,902 (N.J. Sup. Ct., 1979).

New Jersey - state's highest court.

Plaintiffs: the parents of two profoundly retarded children, individually and on behalf of the children. Defendants: state and local officials.

The plaintiffs brought this suit to challenge the $310 credit provided by the state towards expenses incurred by parents of handicapped children in residential institutions. They contend that the $310 limit is unrealistic in view of the broad educational needs of severely and profoundly retarded children, and the potential for development if these needs are met. An adverse decision by a state trial court has been appealed to the state's highest court with its companion case, Levine v. New Jersey, reported in this issue. The state's Office of the Public Advocate has filed an amicus brief in the matter.

New York State ARC and Parisi v. Carey, 72 Civ. 356, 357 (E.D. N.Y. 1979), other citations omitted.

New York - federal district court - class action.

Plaintiffs: residents of the Willowbrook School. Defendants: state and institutional officials.

Case reported earlier: MR&L September 1975 pp. 88-92, September 1976 p. 14, January 1977 p. 7, April 1977 p. 11, January 1978 p. 20, July 1978 p. 10, October 1978 pp. 7-8.

On September 20, 1978 the court enjoined the New York City School system from excluding members of the plaintiff class on the basis of their status as carriers of Hepatitis-B. There have been many developments related to this continuing action. In Society for Good Will to Retarded Children v. Carey (E.D.N.Y. February 21, 1979), reported at 47 U.S.L.W. 2546, federal court held that an attorney's service as a plaintiff representative on the Willowbrook decree implementation panel does not disqualify him from representing clients on subsequent litigation against the same officials for reforms in another institution.

Further action has been brought in NYSARC and Sundheimer v. Kolb, Ind. No. 15502/78. (N.Y. Sup. Ct., Bronx Cty. March 21, 1979), relating to the administration of a state welfare program which provides financial assistance to parents of retarded persons who have been institutionalized, but not to families who have kept their children at home. In Sundheimer, a state trial court held that the program was a violation of equal protection. The state's allegedly adverse reaction to the decision has prompted a motion by the NYSARC plaintiffs to restore the program.

Both cases are currently being reviewed.

Goldstein v. Coughlin, Civ-79-256 (N.D. N.Y. September 25, 1979).

New York - federal district court - plaintiffs' attorneys: Protection and Advocacy System for Developmental Disabilities, Inc., Neighborhood Legal Services, Inc., Buffalo, New York.

Plaintiffs: institutionalized mentally retarded person, his guardian ad litem, and state Protection and Advocacy (P&A) agency. Defendants: state and instititutional officials.

This action alleges that plaintiff has not received any services during his years at a state institution, in violation of state and federal law. The judge denied defendant's motion to dismiss the state P&A agency. Citing the Developmental Disabilities Assistance and Bill of Rights Act and Naughton v. Bevilacqua, reported in this issue, the court held that the agency need not show any injury to itself in order to have standing.

Rone v. Fineman No. C75-355A (N.D. Ohio June 18, 1975), reported at Mental Disability Law Reporter, September-October 1979 p. 306.

Ohio - federal district court.

This suit was brought challenging the conditions at a state mental hospital in 1976. Many of the conditions were changed due to a preliminary injunction and the enactment of a new state statute which defines the right to treatment. The court held that the only constitutional right to treatment is that which is encompassed by the constitutional right to liberty. It stated that the right to minimally adequate treatment can be judicially determined. The court did not apply constitutional standards since conditions had improved, and since the new statutory standard was stricter than the constitutional requirements.

Halderman v. Pennhurst, 446 F.Supp. 1295 (E.D. Pa. 1977).

Pennsylvania - federal district court - class action - plaintiffs' attorney: Public Interest Law Center of Philadelphia, Pa.

Plaintiffs: residents of the Pennhurst State School. Defendants: state, local, and institutional officers.

Case reported earlier: MR&L July 1978 pp. 16-17.

The Third Circuit Court of Appeals has heard oral arguments in the appeal of this case, but no decision has yet been announced. The judges reportedly focused on §504 of the Rehabilitation Act and the Developmental Disabilities Act.

Draft county plans have been submitted to the court, as have plans focusing on the employees and the interim operation of Pennhurst. The Special Master has been reporting monthly on implementation of the court's order.

Vecchione v. Wohlgemuth, 80 F.R.D. 32 (E.D. Penn. 1978).

Pennsylvania - federal district court - class action - plaintiff's attorneys: Judy Greenwood, David Ferleger, Phila., PA; objector's attorney: Thomas Gilhool, Phila., PA.

Case reported earlier: MR&L, September 1975 p. 56; January 1978 p. 19; July 1978 p. 7.

This civil rights action was brought for remedial relief with respect to the rights of patients confined in state mental hospitals in Pennsylvania to control and manage their own property. The Pennsylvania ARC objected to the inclusion of mentally retarded residents in the decree on the grounds that it would stigmatize them. The court held that the proposed settlement would protect the rights of both the mentally ill and mentally retarded and that, to the extent that any alleged antagonisms existed between the two, they would be outweighed by unities of interest.

Naughton v. Bevilacqua, 453 F.Supp. 610 (D. R.I. 1978).

Rhode Island - federal district court - plaintiff's attorney: George M. Prescott, Lincoln, R.I. - intervenors: Rhode Island Protection and Advocacy System, Inc.

Plaintiff: mentally disabled patient in state institution. Defendants: state officials and physicians.

This action was brought for injunctive relief and damages for injuries suffered allegedly in reaction to psychotropic drugs. On a motion for summary judgment, the court held that the complaint stated a private right of action under the Developmentally Disabled Assistance and Bill of Rights Act. The court also found that the state P&A system, established under the Act, need not show injury to itself in order to initiate suit of intervene on behalf of an injured party.

Iasimone v. Garrahy, Civ. No. 77-0727 (D. R.I. April 6, 1979).

Rhode Island - federal district court - class action - plaintiffs' attorney: A. Arnold Lundwall; Jameson, Locke, and Fullerton, Wellesley, MA.

Plaintiffs: class of mentally retarded citizens of Rhode Island. Defendants: state and institutional officials.

An interim consent decree has been reached in this suit. It establishes a framework for providing a suitable living environment and habilitation services for the class, with special emphasis on persons currently residing at the Ladd Center.

W. v. Jones Children's Haven, No. CA3790148-G (N.D. Tex. February 5, 1979).

Texas - federal district court.

Plaintiff - mildly retarded child confined in state institution under state custody. Defendant: county child welfare unit.

Plaintiff challenges her confinement and seeks to receive individualized habilitation in the least restrictive environment suitable to her needs.

In re Phillip B., No. 66103 (Cal. Ct. App. May 8, 1979).

California - state appellate court - plaintiff's attorney: William D. Stein, 6000 State Building, San Francisco, CA 84102 - defendant's attorney: Leonard P. Edwards, 28 North First Street, San Jose, CA 95113.

Plaintiff: Juvenile probation department on behalf of an institutionalized child suffering from Down's Syndrome and a congenital heart defect. Defendants: the parents of the concerned child.

Plaintiff brought a petition requesting that the child be declared a dependent child of the court for the purpose of ensuring that he have an operation to correct his congenital heart defect. His parents refused to consent to the operation, without which the child's condition would deteriorate and his life span would be substantially shortened. The juvenile court dismissed the petition, holding that there was no clear and convincing evidence to sustain the petition. The plaintiff appealed. The Court of Appeals affirmed the dismissal, stating the clear and convincing standard was proper in this case, and that the juvenile court properly balanced the benefits to be gained from the surgery with the risks involved. The court also held that a judge is only under a statutory duty to inform the minor of his right to counsel when the minor is unrepresented. In the present case the minor was represented by counsel. The California Supreme Court refused to hear arguments on appeal. An appeal is planned to the U.S. Supreme Court.

David T. v. DeVito, No. 79 CO 1320 (N.D. Ill. filed 1979).

Illinois - federal district court - class action - plaintiffs' attorney: Patrick T. Murphy, Acting Public Guardian, Chicago.

Plaintiffs: named individuals and class of persons who were patients in the Manteno Mental Health Center in the 1950's and early 1960's. Defendants: state and institutional officials.

Plaintiffs seek declaratory and injunctive relief and damages, alleging that their constitutional and statutory rights have been violated by the defendants. Plaintiffs claim the defendants performed experimental procedures on them without informed consent, while the plaintiffs were residents of state facilities.

Rogers v. Okin, (D. Mass. October 29, 1979), reported at 48 U.S.L.W. 2328.

Massachusetts - federal district court - class action.

Plaintiffs: mentally ill patients committed to Boston State Hospital. Defendants: state and institutional officials.

The court held that mental patients have a right, based upon the Constitution's right of privacy, to refuse anti-psychotic medications, except in emergency circumstances presenting substantial likelihood of physical harm. The court also stated that the hospital's routine use of patient seclusion violated the patient's due process liberty interests.

Rennie v. Klein, 462 F.Supp. 1131 (D.N.J. 1978).

New Jersey - federal district court - class action - plaintiffs' attorney: New Jersey Department of the Public Advocate, Division of Mental Health Advocacy, Trenton, N.J.

Plaintiffs: class of patients in state mental hospital. Defendants: state and institutional officials.

In its reported decision, the court held that a right to refuse medication, based on the constitutional right of privacy, should be recognized. Because of countervailing state interests, the right is qualified. These factors must be considered in each situation: (1) patient's physical threat to other patients and staff, (2) patient's capacity to decide on his particular treatment, (3) the existence of any less restrictive treatment, and (4) the risk of permanent side effects from the proposed treatment. On September 14, 1979 the court fashioned a decree to enforce the right, setting out the due process procedures to be provided before medication with psychotropic drugs can take place. The procedural protections include requiring specific written consent, information on drugs, a system of patient advocates and internal review.

Berman v. Allen, (N.J. Sup. Ct. June 26, 1979), reported at 48 U.S.L.W. 3172.

New Jersey - state's highest court - plaintiffs' attorney: William O. Barnes, Jr., Newark, N.J.

Plaintiffs: parents, and child with Down's Syndrome. Defendants: two physicians.

In this medical malpractice action, the parents alleged that the physician failed to inform the 38-year-old mother of the availability of amniocentesis to determine the risk of a defective child. The court held that this stated a cause of action for "wrongful birth", that if proven, would entitle the parents to damages for mental and emotional anguish, but not for the medical and other costs of rearing their child.

Becker v. Schwartz, 386 N.E.2d 807 (N.Y. 1978).

New York - highest state court.

This was a consolidation of two cases where parents attempted to sue for damages resulting from the birth of defective children. The court did not find existence of an action for "wrongful life" on behalf of the infants. However, it did hold that "parents whose doctors negligently fail to inform them of potential defects in expected children, causing them to forego the option of not conceiving or of terminating pregnancy, may recover damages for pecuniary loss occasioned by the birth of defective infants, but may not recover for psychic or emotional harm resulting from such births.

See also: Speck v. Finegold, No. 7 April Term, 1977 (Pa. Super. Ct. Pittsburgh Dist. July 25, 1979).

Vaccaro v. Squibb Corp., (N.Y. Sup. Ct. November 8, 1978), reported at 47 U.S.L.W. 2344.

New York - trial court
Plaintiffs: parents of child born with congenital defects. Defendant: drug manufacturer.
The plaintiffs sought damages for emotional injuries resulting from the birth of a child with congenital defects. These defects allegedly were a result of the injection of the mother with a drug during pregnancy. The court held that "if the injections were the direct and proximate cause of the birth of a deformed infant, this court will permit the parents to prove whatever other injuries may have been caused as a natural consequence of the wrongful act."

PARENTAL RIGHTS AND SEXUALITY

Sparkman v. McFarlin, 601 F.2d 261 (C.A.7 May 2, 1979).

Federal Circuit Court of Appeals.
Plaintiff: woman sterilized by court order without her consent. Defendants: parents and physicians.
Case reported earlier: MR&L July 1978 p. 10.
In an attempt to impose liability upon the private parties remaining in the litigation, the plaintiff used a theory that they conspired with a state official (a judge). The court disagreed, and affirmed the original dismissal of the action by the district court. Plaintiff reportedly has decided to drop any further action.

Ruby v. Massey, 452 F.Supp. 361 (D. Conn. 1978).

Connecticut - federal district court - plaintiffs' attorney: Judith M. Mears, New Haven, Connecticut.
Plaintiffs: three sets of natural parents of severely mentally retarded and physically handicapped girls. Defendants: university health center and physicians.
This action sought injunctive and declaratory relief, challenging the refusal of defendants to perform sterilizations upon the daughters of the plaintiffs. After findings that the sterilizations were medically indicated, the court held that parents could not give valid consent to sterilization of their children and that the state denied the parents their right to equal protection by refusing to make available a statutory method for obtaining such consent which was made available only to residents of state institutions.

In re I.C., No. 34156 (Ga. Sup. Ct. Dec. 5, 1978).

Georgia - state's highest court.

Appellants had their parental rights terminated on the grounds that they are mentally incapable of providing the minimal needs and means of subsistence for their two children and that there is no prospect for future improvement. Appellants challenged the Georgia statutes under which their rights were terminated, on grounds (1) of equal protection; (2) that the law deprives them of the fundamental right to raise their children without promoting a compelling governmental interest; and (3) that the laws discriminate against handicapped persons of extremely low mentality by grouping them with persons who intentionally deprive their children. In upholding the termination, the court rejected all three constitutional arguments. It held that the compelling interest of the welfare of the children required that parental rights be terminated where appellants had received almost all services available from the Department of Human Resources, but where appellants had demonstrated no improvement in ability to care for the children.

Department of Public Welfare v. Oakes, No. 1703 (Mass. Sup. Jud. Ct. 1979).

Massachusetts - Supreme Judicial Court - defendant's attorney: Jinanne S.J. Elder; Elder, Moses, Spencer and Weiss, Boston, MA 02116.

Plaintiff: Massachusetts Department of Public Welfare. Defendant: a mother diagnosed as suffering from chronic, undifferentiated schizophrenia.

Defendant appeals from the judgment of the Boston Juvenile Court that, pursuant to state statute, her son is a child in need of care and protection and that he should be permanently committed to the custody of the Department of Public Welfare. Defendant claims that her state and federal constitutional rights to due process have been violated. Defendant also contends that in order to deprive her of the custody of her child the state is required to show beyond a reasonable doubt, by clear and convincing evidence, that the child suffered harm or will suffer harm because of her conduct.

State v. Robert H., 393 A.2d 1387 (N.H. Sup. Ct. 1978).

New Hampshire - state's highest court - respondent's attorney: Kenneth L. Robinson, Jr., Concord.

Petitioner: State of New Hampshire. Respondent: the father of three minor children.

The Merrimack County Probate Court terminated the respondent's parental rights over his three children on grounds of failing to correct conditions leading to a finding of neglect. Respondent appealed. The Supreme Court, basing its decision on the state constitution and the state statute providing for involuntary termination of parental rights, held that absent a showing of specific harm to the child, parental rights may not be terminated. The state must prove specific harm beyond a reasonable doubt and satisfy the clear and convincing evidence standard.

In re J.L.B., 594 P.2d 1127 (Mont. Sup. Ct. 1979).

Montana - highest state court.

In this case, the court terminated a "borderline mentally retarded" mother's parental rights. The court found clear and convincing evidence that the child was suffering harm, since the mother "could not understand her child's needs and realistically provide for them."

In re L.G., No. C-1917-78E (N.J. Super. Ct. Morris Cty. July 12, 1979)

New Jersey - state trial court.

Petitioners: An eighteen-year-old mentally retarded female and her parents. Intervenors: New Jersey's public advocate and attorney general.

The parents brought an action to obtain court authorization for the sterilization of their mentally retarded daughter. The court held that the constitutionally protected right of privacy encompasses the right to be sterilized and that the right can be exercised by an incompetent child through the child's parents if certain conditions are met. The child must be permanently incompetent as to the nature and implications of the procedure; there can be no indication that the child is infertile; due process requirements must be met; and the parents must have demonstrated their genuine good faith and that their primary concern is for the best interests of their child.

The court acted pursuant its general equity powers, not under statutory authority. The decision, and the briefs filed by the intervenors and guardian ad litem, discuss the conflicting common law and statutory sources for judicial authority in the area of sterilization. This case will reportedly be appealed.

In re Baby Boy K., 415 N.Y.S.2d 602 (Fam. Ct. 1979).

New York - family court - petitioner's attorney: Larry G. Schwartzstein, New York City, by Gail R. Steinhagan; respondent mother's attorney: Robert S. Hartman, Theodore Zeichner, Mobilization for Youth Legal Service, New York City.

Petitioner: a minor alleged to be a neglected child. Respondent: the mother of the petitioner.

The respondent was adjudicated incompetent by the trial court, because of her mental retardation and emotional disturbances. The mother attempted to execute a voluntary surrender of her child, with the approval of her guardian. The family court found that the mother understood the nature and consequences of the act, but that the mother, because of her incompetency, could not execute a binding surrender of her child even though she was represented by counsel of her own choosing. The court also held that in cases where an incompetent wishes to exercise a personal privilege and choose between alternative rights, the incompetent's guardian may only act with prior authorization of the Supreme Court. The court directed the guardian to proceed to the Supreme Court, holding these proceedings in abeyance to await the decision of the Supreme Court. (This is not the state's highest court.)

In re Ana Maria R., 414 N.Y.S.2d 982 (N.Y. County Fam. Ct. 1979).

New York - state Family Court - petitioner's attorney: John J. Carlin, Floral Park; respondent mother's attorney: Raymond Gleicher, New York City.

Petitioner: Catholic Guardian Society. Respondent: a 27-year-old Puerto Rican woman who is uneducated and illiterate.

The Catholic Guardian Society petitioned the court for the termination of parental rights of the father on the ground of abandonment, and for the termination of parental rights of the mother on the grounds of mental retardation and/or mental illness. The court terminated the parental right of the father but refused to terminate the rights of the mother. The court held that when mental retardation or mental illness is asserted as grounds for the termination of parental rights, a clear and convincing standard of proof is required. The petitioner did not meet this burden. The petitioner also did not comply with the New York statute governing the situation, which requires the testimony of a court appointed physician and a court appointed psychologist. The court noted that I.Q. tests should not be the primary consideration in determining the competency of a parent, especially when a parent of foreign background is involved, since the tests have been shown to be culturally biased and may not be a reliable measure of the parent's mental competency.

In re Johnson, 243 S.E.2d 386 (Ct. App. N. Car. 1978).

North Carolina - state appellate court - plaintiff's attorney: Beaman, Kellum, Mills, and Kafer, P.A., New Bern, N.C.

Appellant: "moderately" retarded woman, on state petition for her sterilization.

This case was an appeal from a trial court order authorizing a sterilization. The court ordered a new trial on the grounds of prejudicial jury instructions relating to the burden of proof and necessary findings of fact.

In re Marcia R., 383 A.2d 630 (Vt. Sup. Ct. 1978).

Vermont - highest state court - plaintiff's attorneys: Patrick R. Berg, Vermont Legal Aid, Inc., Rutland, and Judith M. Mears and Lissa Paris, American Civil Liberties Union, New Haven, Connecticut.

Plaintiff: a sixteen year-old institutionalized mentally retarded female. Defendants: the plaintiff's parents.

The parents of a severely retarded teenage female arranged for her to undergo a sterilization operation, believing that the operation would be in the child's best interests. The American Civil Liberties Union brought an action to prevent the sterilization. The lower court refused to issue a permanent injunction against the operation and an appeal was taken. The state Supreme Court found that the proper statutory procedures for voluntary sterilizations had not been followed. The court held that a state statute which provides for the voluntary sterilization of the mentally defective and the mentally ill also applies to the mentally retarded. It also stated that the underlying assumption that the statute does not apply to minors is not necessarily correct, but the court did not address the issue, since it was no longer relevant to the case. The court reversed the judgment of the lower court and remanded with the direction that a permanent injunction be ordered until the statutory provisions are complied with.

Larry P. v. Riles, C.A. No. C-71-2270-RFP (N.D. Calif. October 16, 1979), reported at 48 U.S.L.W. 2298. (other citations omitted).

California - federal district court - class action - amicus: U.S. Justice Department.

Case reported earlier: MR&L September 1975 pp.8-9, October 1978 p.1.

Plaintiffs: black public school children in California. Defendants: state and state agencies.

The court held that the state's use of "invalidated" IQ tests which result in a grossly disproportionate number of black children in "educable mentally retarded" (EMR) classes, violates the Civil Rights Act, the Rehabilitation Act and the Education for All Handicapped Children Act. Under the terms of an earlier injuction, California failed to take the necessary steps to determine whether or not the tests were "valid," to see if they were suited to the purposes for which they were being used.

Boxall v. Sequoia Union High School District, 464 F.Supp. 1104 (N.D. Cal. 1979).

California - federal district court - plaintiffs' attorney: Alice Schaffer Smith, Palo Alto, California.

Plaintiffs: 16-year-old autistic child, and his father. Defendants: local school district, county, state, and individuals representing those institutions.

The plaintiffs sued for injunctive relief and damages for the alleged failure of the school district to provide a free appropriate education and by refusing to pay for a full-time provate tutor at home. The court denied defendants' motion to dismiss, holding that the plaintiffs had a private right of action under §504 of the Rehabilitation Act, that exhaustion of P.L. 94-142 administrative procedures served to comply with the requirements of §504, and that since the action fell under both federal statutes, the court had authority to award damages incurred in providing a tutor over the two-year period.

P-1 v. Shedd, No. 78-58 (D. Conn. February 1, 1978).

Connecticut - federal district court - class action - plaintiffs' attorney: Paula Mackin Cosgrove, Hartford, CT.

Plaintiffs: six handicapped children, and class of students eligible to receive free and appropriate public education. Defendants: state and local officials.

The complaint states that plaintiffs have failed to comply with state and federal law by not providing or implementing individualized education plans. Plaintiffs seek declaratory and injunctive relief.

Campochiaro v. Califano, Civil No. H-78-64 (D. Conn. May 18, 1978).

Connecticut - federal district court.
Plaintiffs: Parents of an allegedly learning-disabled child. Defendants: Secretary of DHEW, Connecticut's Commissioner of Education, local town and the school superintendent.
The plaintiffs in this case successfully challenged the statutory procedures used by Connecticut in administering P.L. 94-142. The court dismissed the Secretary of DHEW as a defendant, but granted a preliminary injunction compelling the defendants to appoint an impartial hearing officer to conduct a review of the child's evaluation.

Connecticut ARC v. State Board of Education, No. H 77-122 (D. Conn. December 7, 1978).

Connecticut - class action - federal district court.
Plaintiffs: Connecticut ARC, named plaintiffs and the class of all severely or profoundly handicapped children who have been excluded from the public school system. Defendants: state board of education.
Reported earlier: MR&L January 1978 p.15, October 1978 p. 3.
This suit has been settled after passage of a new state statute establishing a special school district within the state department of mental retardation to implement the plaintiff children's right to a free public education. The local districts are responsible for the education of severely and profoundly retarded school-age children who are not residents of state facilities. The special district will be responsible for suitable education of children admitted to residential facilities for more than 14 days.

Michael P. v. Maloney, Civil Action No. H78-545 (D. Conn. October 13, 1978).

Connecticut - class action - federal district court - plaintiffs' attorney: Paula Mackin Cosgrove, 161 Washington St., Hartford, CT 06106.
Plaintiffs: named plaintiff, seeking certification of class of parents with children in need of special education services denied such by state policy. Defendants: Commissioners of two state departments.
Under PL.L 94-142, §504 of the Rehabilitation Act, and state law, the plaintiffs are challenging the policies of the Commissioner of Children and Youth Services which require that certain parents or guardians of children in need of residential special education programs obligate themselves to pay a portion of the costs of such residential placement.

North v. District of Columbia Board of Education, 471 F.Supp. 136 (D. D.C. 1979).

District of Columbia - federal district court - plaintiffs' attorney: J. Dennis Doyle, Urban Law Institute.

Plaintiffs: parents of multiply handicapped child. Defendants: local board of education and local agencies.

The parents of the child brought this suit against various local agencies seeking declaratory and injunctive relief under the Rehabilitation Act and P.L. 94-142. The court held that the board of education had the responsibility for providing residential educational services to the child. Furthermore, although the child's problems were both educational and non-educational, resolution of dispute between various state agencies as to who would be responsible was not to be left to local law, since resulting proceedings, including one for neglect, would have a devastating impact upon the child.

Capello v. D.C. Board of Education, No. 79-1006 (D. D.C. May 9, 1979), reported at Mental Disability Law Reporter, September-October 1979 p. 330.

District of Columbia - federal district court.

Plaintiff: a handicapped male who turned 19 in August 1979. Defendant: the District of Columbia Board of Education.

Plaintiff sought a residential special education placement. Defendant denied him this placement because under the Education for All Handicapped Children Act, schools are not required to serve children over 18 until September 1980. The court ordered the defendant to formulate an appropriate educational program for the plaintiff. The court stated that the Act did not prohibit the states from providing services to handicapped children over 18 until September 1980, and that federal funding is available for such services. The court also noted that the school board's own regulations set September 1980 as the last possible date for full compliance and not as the date to begin compliance with the Act.

Elliot v. Chicago Board of Education, (Ill. App. Ct. Sept. 13, 1978), reported at 47 U.S.L.W. 2187.

Illinois - state appellate court.

A state statute limited the amount of tuition that the state must pay for special education of handicapped children who were excluded from public schools and attended non-public schools. The court stated that the legislature had established the education of handicapped students as part of the responsibility of the public school system, including that furnished in private schools. As established, such education must be free of tuition charges; and the statute was in violation of the state constitution.

William C. v. Board of Education of Chicago, 390 N.E.2d 479 (Ill. App. Ct. 1979).

Illinois - state appellate court - plaintiffs' attorney: David P. Kula, Anthony Scariano and Associates, P.C., Chicago Heights.

Plaintiffs: parents of two mentally handicapped children, Defendant: local school district.

The parents sought a writ of mandamus ordering the school district in which they resided to pay for the special education programs for their children. Both children attended programs in other school districts due to lack of appropriate placements in their own school district. The court held that it is the legal residence of the child, determined by the legal residence of the parents, and not the physical presence of the child, which determines financial responsibility to pay for special education programs.

Stemple v. Board of Education of Prince George's County, 464 F.Supp 258 (D.Md. 1979).

Maryland - federal district court - plaintiffs' attorneys: Donald N. Bersoff, Susan P. Leviton, Baltimore, Maryland.

Plaintiffs: A multiply-handicapped child and her parents. Defendants: Board of Education of Prince George's County, the State of Maryland and various county and state education officials.

Plaintiffs brought suit under P.L. 94-142 and §504 of the Rehabilitation Act of 1973 to obtain judicial review of defendants' denial of tuition reimbursement for private schooling for the child. The court granted defendants' motion to dismiss. The court held that the administrative procedures of which plaintiffs complained were prior to the effective date of P.L. 94-142. The allocation of the burden of proof to parents in challenging the public program was not contrary to §504, and finally, an alleged procedural impropriety in a hearing need not be reached, since the state defendants would be immune from such suit under the Eleventh Amendment.

Egan v. School Administrative District 57, Civ. Action No. CV 77-283 (D. Me. January 20, 1978).

Maine - federal district court - plaintiff's attorney: Michael Asen, 146 Middle St., Portland, Maine 04101.

Plaintiff: mother of fifteen-year-old retarded child. Defendants: local school district and officials, state department of education.

This complaint, based on P.L. 94-142 and §504, seeks to maintain the child in a self-contained program in a public school in which she has the opportunity to interact with non-handicapped children of her age group. The school sought to place the child in a new school, one solely for handicapped children, after plaintiff moved into the district from another district where the child had the less restrictive placement.

McGill v. Finnigan, No. CA-79-1430-C (D. Mass. August 2, 1979).

Massachusetts - federal district court - class action - plaintiffs' attorney: Kenneth N. Margolin, Boston, MA.

Plaintiffs: handicapped children in Boston who received notices recommending changes in their educational placements for the coming school year. Defendants: Boston public school system.

The complaint alleged that "the proposed changes were decided upon by defendants as part of an administrative scheme, without regard to the Individualized Education Plan of each child, without parental involvement and in disregard of federal and state special education laws." A consent decree was arrived at on August 14. Defendants will notify class members of their status, their ability to have a proper review of the changes, and to remain with the same placement as the past year.

Amherst-Pelham Regional School Committee v. Department of Education, Mass. Adv. Sh. 2673 (Mass. Sup. Jud. Ct. October 6, 1978).

Massachusetts - state's highest court - state's attorney: Terry Jean Seligmann, Assistant Attorney General.

Plaintiff: local school committee. Defendant: state agency.

The state's highest court held that "retroactive reimbursement to parents who have provided necessary [special education] services at their own expense, from the date at which they rejected the school committee's inadequate plan, is consistent with the statutory scheme [of C.766]."

Allen v. McDonough, Civ. Action No. 14948 (Mass. Super. Ct. 1977).

Massachusetts - class action - state superior court - plaintiffs' attorney: Thomas Mela, Massachusetts Advocacy Center, 2 Park Square, Boston, MA 02116.

Plaintiffs: Boston school children who have been denied special education services. Defendants: Boston School Committee and the Superintendent of Schools.

Case reported earlier: MR&L January 1978 p. 15, July 1978 p. 3.

The judge in this case has ordered, on May 25, 1979, continuation of the provision and monitoring of special education services. Detailed standards have been drawn up in order to compensate for "missed" services. Additional services may be provided during or after normal school hours, during summer recess, or after graduation.

Mattie T. v. Holladay, Civ. Action No. DC-75-31-S (N.D. Miss. January 26, 1979).

Mississippi - class action - federal district court - plaintiffs' attorney: Daniel Yohalem, 1520 New Hampshire Ave., N.W., Washington, DC 20036.

Plaintiffs: class of all school-age children in the state who are handicapped or are regarded by their schools as handicapped. Defendants: named state officials responsible for administering state special education programs and officials from seven local school districts.

Filed on April 25, 1975, this case challenged (a) the denial of special education services to handicapped children who had been either excluded from

school entirely, placed in inappropriate special education programs, or neglected in regular classes; (b) the provision of segregated and isolated special education programs; (c) the use of racially and culturally discriminatory procedures in the identification, evaluation and educational placement of such children; and (d) the absence of procedural safeguards to review decisions of school officials. Such procedures and practices were challenged as violating rights under P.L. 94-142, §504 of the Rehabilitation Act, Title I of the Elementary Education Act of 1965, and the Fourteenth Amendment. On July 28, 1977, the plaintiffs' motion for summary judgment was granted. The court ordered defendants to submit annual plans for 1978 and 1979 to comply with its order. On January 26, 1979 a lengthy consent decree had been arrived at which settles all claims against the state defendant except attorney's fees. The court has retained jurisdiction for purposes of granting further relief or other appropriate orders.

Whitlock v. Moore, Civil Action No. E78-0109(R) (S.D. Miss. September 1978).

Mississippi - federal district court - plaintiff's attorney: James T. Breland, The Mississippi System of Protection and Advocacy for Developmentally Disabled Individuals, Inc., 510 George St., Jackson, Miss. 39201.

Plaintiff: 9-year-old child in EMR special education class. Defendant: local school district, state agency and director.

This complaint seeks damages and immediate relief to require defendants to enable plaintiff to receive an appropriate education under P.L. 94-142. Plaintiff charges that defendant is willfully delaying the implementation of services called for by a due process IEP hearing.

In re R.K., (N.H. Dist. Ct., Hookset, June 8, 1979).

New Hampshire - state trial court.

Plaintiffs: parents of handicapped emotionally disturbed child. Defendant: local school district.

The court held under P.L. 94-142 that the local school district must pay for year-round residential placement of the child "since the evidence is abundantly clear that his needs require such a placement."

Levine v. New Jersey, 390 A.2d 699 (N.J. Super. Ct., App. Div. 1978).

New Jersey - state appellate court - plaintiffs' attorney: Michael J. Mella, P.A., Fair Lawn.

Plaintiffs: parents/guardian of severely mentally retarded institutionalized child. Defendant: state agency and institution.

Plaintiffs brought an action to compel the state to provide "total education" to their child without cost and to relieve them from liability claims for past services. The court held that the parents were not entitled to relief from their obligation and that the difference in the state's statutory treatment of parental obligation for institutionalized versus non-institutionalized children was constitutionally justified.

This case has been appealed to the state's Supreme Court, No. 15176. An amicus brief was filed by the state's Department of the Public Advocate. See the companion case, Guempel v. New Jersey, reported in this issue.

Hoffman v. Board of Education of City of New York, 410 N.Y.S.2d 99 (Sup. Ct. App. Div. 1978).

New York - Supreme Court, Appellate Division - plaintiff's attorney: Pazer and Epstein, New York City.

Plaintiff: a man with normal intelligence, but who as a child was placed in a class for the mentally retarded. Defendant: the city board of education.

Plaintiff sought damages for his diminished intellectual development and psychological injury caused by his placement in a special education program. Plaintiff's I.Q. was just below the cut-off point for attending classes for children with normal intelligence. The court found that the defendant had been negligent in not having the plaintiff retested every two years as suggested by the school psychologist. The court held that the plaintiff was entitled to recover $500,000 from the city board of education.

Armstrong v. Kline, Civ. Action No. 78-172 (E.D. Penn. June 21, 1979).

Pennsylvania - federal district court - class action - plaintiffs' attorney: Janet F. Stottland, Education Law Center, 2100 Lewis Tower Bldg., 225 South 15th Street, Philadelphia, PA 19102.

Plaintiffs: named children and class of all handicapped school aged persons in Pennsylvania who require or may require a program of special education services in excess of 180 days per year, and parents/guardians of such persons. Defendants: state secretary of education, local school districts and officials.

The court held that P.L. 94-142 requires the state and/or local school districts to provide a special education program in excess of the normal 180 day school year to any handicapped child who requires such a program. The court stated that due process procedures must be opened to allow parents to raise the question of their child's need for continuous programming. Plaintiffs had alleged that because of the severity of the children's conditions, they would regress during periods of interrupted programming and that they were limited in their capacity to recoup lost skills.

Levy v. Pa. Dept. of Education, 399 A.2d 159 (Pa. Commw. Ct., 1979).

Pennsylvania - state trial court - plaintiffs' attorney: Steven S. Goldberg, Education Law Center, 2100 Lewis Tower Bldg., 225 South 15th St., Philadelphia, PA 19102.

Plaintiffs: A sixteen year old handicapped child and her parents. Defendant: Pennsylvania Department of Education.

Plaintiffs challenged the Board of Education's decision that they could not continue their child's placement at a school for brain injured children since she was mentally retarded rather than brain injured. The court held that a person could not be labeled mentally retarded solely on the basis of IQ scores. The court also held that a minor should not be removed from an adequate and appropriate program solely on the basis of classification.

Welsch v. Pennsylvania Department of Education, 400 A.2d 234 (Pa. Commw. Ct. 1979).

Pennsylvania - state trial court - petitioners' attorneys: Lester J. Schaffer; Blank, Rome, Klaus and Comiskey, Philadelphia; Harris F. Goldrich, Norristown.

Petitioners: the parents of a socially and emotionally disturbed child. Respondent: Pennsylvania Department of Education.

The petitioners sought tuition reimbursement from Pennyslvania for the enrollment of their child in a Connecticut residential school for socially and emotionally disturbed children. The parents had enrolled the child in the program on their own initiative and refused to make the child available to the Pennsylvania authorities to determine his academic needs. The court denied tuition reimbursement on the grounds that parents had not met all of the requirements of the state special education law. The statute allows out of state tuition reimbursement only if the parents, local school district and secretary of education agree that there is no appropriate program in Pennsylvania for the child.

Smith v. Cumberland School Committee, No. 76-510 (D. R.I. May 29, 1979), reported at Mental Disability Law Reporter, September-October 1979 p. 329.

Rhode Island - federal district court.

Plaintiffs: a multi-handicapped child and his parents. Defendants: local school district and the state Department of Education.

Plaintiffs challenged the use of state department of education employees as hearing officers in reviewing local decisions inder the Education for All Handicapped Children Act. The court stated that the law only disqualifies employees of the agency in the initial hearing, not appeals of local decisions. The court also held that state statute gives family courts jurisdiction to review local administrative decisions affecting children only after the decision has been reviewed by the appropriate state agency. This decision is contrary to Campochiano v. Califano, reported in this issue.

Howard S. v. Friendswood Independent School District, 454 F.Supp. 634 (S.D. Texas 1978).

Texas - federal district court - plaintiffs' attorneys: J. Patrick Wiseman and Reed Martin, Houston, Texas.

Plaintiffs: parents of handicapped child. Defendants: local school district and state.

The plaintiffs sought injunctive relief to insure that their child received necessary and appropriate treatment and education. The court held that the school district violated its due process obligations under the Fifth and Fourteenth Amendments and §504 of the Rehabilitation Act by failing to provide hearings with respect to the student's constructive expulsion. The court found a private right of action under §504, and issued a preliminary injunction requiring the school district to pay the cost of the student's private schooling necessitated by his difficulties.

Panitch v. Wisconsin, 451 F.Supp. 132 (E.D. Wis. 1978).

Wisconsin - federal district court - plaintiffs' attorney: Peregrine Marcuvitz; Cameron and Pelton, Milwaukee, Wis.

Plaintiffs: class of handicapped children in state deserving special education. Defendants: state and local agencies and officials.

This civil rights action was brought in 1974 (see 390 F.Supp. 611) on behalf on the state's handicapped children, for a declaration that policies and practices of the state and local officials denied them free and appropriate public education. An injunction was granted in 1977 (see 444 F.Supp. 320). In this reported opinion, a three-judge district court held that appointment of a master to monitor implementation was not required due to defendants' good faith efforts; however, attorney's fees were awarded against defendant.

MISCELLANEOUS

Feinberg v. Diamant, Mass. Adv. Sh. 1321 (Mass. Sup. Jud. Ct. 1979).

Massachusetts - state's highest court - defendant's attorney: David J. Granovsky - plaintiff's attorney: Benjamin W. Gorey.

Petition for modification of divorce decree.

The court held that a divorced parent, who is financially capable, can be compelled to contribute to the support of a mentally incapacitated adult child who by reason of mental or physical infirmity incurs expenses that he or she is unable to meet. The probate court has authority to issue such an order pursuant to its general equity power or powers to decide all matters relative to persons placed under guardianship.

In re Bonsanto, (N.J. Super. Ct., Burlington Cty., December 6, 1978).

New Jersey - state trial court.

Petitioner appearing pro se.

In this complaint, a losing candidate for municipal office alleges that residents at a school for retarded persons were illegally assisted by election officials in casting their votes.

Data Factors, Inc. v. Cotto, No. 27245/76 (N.Y. Civ. Ct., Bronx Co. Feb. 6, 1979).

New York - state trial court.

In an action brought to collect monies owed on an installment contract, the defendant debtor has raised the defense of lack of capacity to contract due to mental retardation. He argues that the action against him should be dismissed under the New York standard of mental capacity. The standard is whether the individual is so affected by his disability as to render him unable to comprehend and understand the nature of the transaction and understand the consequences of his act. Defendant further argues that capacity must be measured at the time of the execution of the contract. He seeks a restoration of monies already garnished from his wages and a judgment dissolving the debt.

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